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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

16

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,637

Applicant(s)

POTTS ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13, 14, 16-30, 32-36 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14, 30 and 39 is/are allowed.
- 6) ☒ Claim(s) 1 - 11, 13, 16 - 27, 29, 32 - 36, 38 and 40 - 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 1, 2004 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 11, 13, 16 – 27, 29, 32 – 36, 38 and 40 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yahiaoui et al. (WO 98/10134).

With respect to claim 1, Yahiaoui et al. (hereinafter "Yahiaoui") discloses the a personal care absorbent article (page 3, lines 1 – 3) comprising an outer cover layer, a liner layer, and a containment layer between the outer cover and the liner layer wherein at least one of the layers comprises a pulp – based nonwoven web material (page 10,

Art Unit: 3761

lines 9 – 13) treated with a density modulator consisting essentially of an alkyl glycoside (page 2, lines 34 – 36 and page 11, lines 2 – 4) wherein the at least one layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing body fluid as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses the personal care article comprising) comprising an outer cover layer (716), a liner layer (712) and a containment layer (718) between the outer cover and the liner layer (figure 7) wherein at least one of the layers comprises a pulp – based nonwoven web material (col. 7, lines 17 – 22).

The difference between Yahiaoui and claim 1 is the provision that the layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing bodily fluid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the layer of Yahiaoui that is treated with the density modulator would ultimately increase in thickness by at least about 12% when the layer comes into contact with a blood – containing body fluid because Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7) which is identical to that claimed by the subject application on page 14, lines 12 – 15.

The claimed invention is directed to an absorbent article treated with a density modulator. The density modulator makes the treated material in the absorbent article more wettable, thus increasing the article's intake capacity and also lowers the density

Art Unit: 3761

of the treated material when the material comes into contact with a blood – containing fluid. By lowering the density of the treated material, the volume of the material increases. See page 5, lines 10 – 16 of the instant specification.

Likewise, Yahiaoui discloses the use of the same density modulator (GLUCOPON 220) as used by the applicant. Therefore, it has been established that Yahiaoui provides an absorbent article treated with a density modulator, which in turn, would increase the thickness of the treated layer when that layer comes into contact with a blood – containing body fluid. In light of this, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Further, absent of a critical teaching and/or unexpected result with respect to the percentage of density modulator used, the examiner contends that the claimed invention is not patentably distinct from the prior art.

As to claim 2, Yahiaoui discloses the density modulator is applied to the liner layer as set forth on page 2, lines 20 – 23. Yahiaoui discloses a nonwoven may be treated on one or both sides with the density modulator and that the density modulator may be applied to a multilayer laminate on page 10, lines 9 – 13, which would include the liner layer as previously disclosed.

With reference to claim 3, Yahiaoui discloses the density modulator being applied to the liner layer in a in a concentration of up to about 20% by weight of the liner layer

Art Unit: 3761

as set forth on page 11, lines 3 – 7. Yahiaoui discloses the use of the modulator with the diaper liner as set forth on page 10, line 29.

With reference to claim 4, Yahiaoui discloses the density modulator is applied to the liner layer in a concentration between about 5% and 15% by weight of the liner layer as set forth on page 11, lines 3 – 7. Yahiaoui discloses the use of the modulator with the diaper liner as set forth on page 10, line 29.

With reference to claim 5, Yahiaoui discloses the density modulator being is applied in a concentration of between about 8% and 12% by weight layer as set forth on page 11, lines 3 – 7. Yahiaoui discloses the use of the modulator with the diaper liner as set forth on page 10, line 29.

The difference between Yahiaoui and claim 6 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9).

Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of

Art Unit: 3761

the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 7 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 8 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious

to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 9 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 10 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses that the density modulator is useful for a diaper liner (page 10, line 29) and that the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9).

Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 11 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7), which is identical to that, claimed by the subject application on page 14, lines 12 – 15. Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Regarding claim 13, Yahiaoui discloses a pulp – based nonwoven web material comprising a material selected from the listed group as set forth on page 10, lines 9 –

Art Unit: 3761

13 through the incorporation of Yahiaoui which discloses the pulp – based nonwoven web material comprising a material selected from the listed group as set forth in col. 6, lines 26 – 30.

Regarding claim 16, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use) which includes a wound dressing.

With respect to claim 17, Yahiaoui discloses a catamenial device (page 3, lines 1 – 3) comprising an outer cover layer, a liner layer, and a containment layer between the outer cover and the liner layer wherein at least one of the layers comprises a pulp – based nonwoven web material (page 10, lines 9 – 13) treated with a density modulator consisting essentially of an alkyl glycoside (page 2, lines 34 – 36 and page 11, lines 2 – 4) wherein the at least one layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing body fluid as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses the personal care article comprising) comprising an outer cover layer (716), a liner layer (712) and a containment layer (718) between the outer cover and the liner layer (figure 7) wherein at least one of the layers comprises a pulp – based nonwoven web material (col. 7, lines 17 – 22).

The difference between Yahiaoui and claim 17 is the provision that the layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing bodily fluid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the layer of Yahiaoui that is treated with the density modulator would ultimately increase in thickness by at least about 12% when the layer comes into contact with a blood – containing body fluid because Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7) which is identical to that claimed by the subject application on page 14, lines 12 – 15.

The claimed invention is directed to an absorbent article treated with a density modulator. The density modulator makes the treated material in the absorbent article more wettable, thus increasing the article's intake capacity and also lowers the density of the treated material when the material comes into contact with a blood – containing fluid. By lowering the density of the treated material, the volume of the material increases. See page 5, lines 10 – 16 of the instant specification.

Likewise, Yahiaoui discloses the use of the same density modulator (GLUCOPON 220) as used by the applicant. Therefore, it has been established that Yahiaoui provides an absorbent article treated with a density modulator, which in turn, would increase the thickness of the treated layer when that layer comes into contact with a blood – containing body fluid. In light of this, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention

Art Unit: 3761

since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Further, absent of a critical teaching and/or unexpected result with respect to the percentage of density modulator used, the examiner contends that the claimed invention is not patentably distinct from the prior art.

As to claim 18, Yahiaoui discloses the density modulator is applied to the liner layer as set forth on page 2, lines 20 – 23. Yahiaoui discloses a nonwoven may be treated on one or both sides with the density modulator and that the density modulator may be applied to a multilayer laminate on page 10, lines 9 – 13, which would include the liner layer as previously disclosed.

With reference to claim 19, Yahiaoui discloses the density modulator being applied to the liner layer in a concentration of up to about 20% by weight of the liner layer as set forth on page 11, lines 3 – 7. Yahiaoui discloses the use of the modulator with the diaper liner as set forth on page 10, line 29.

With reference to claim 20, Yahiaoui discloses the density modulator is applied to the liner layer in a concentration between about 5% and 15% by weight of the liner layer as set forth on page 11, lines 3 – 7. Yahiaoui discloses the use of the modulator with the diaper liner as set forth on page 10, line 29.

With reference to claim 21, Yahiaoui discloses the density modulator being is applied in a concentration of between about 8% and 12% by weight layer as set forth on page 11, lines 3 – 7. Yahiaoui discloses the use of the modulator with the diaper liner as set forth on page 10, line 29.

The difference between Yahiaoui and claim 22 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9).

Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 23 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious

Art Unit: 3761

to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 24 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 25 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 26 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses that the density modulator is useful for a diaper liner (page 10, line 29) and that the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9).

Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 27 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7), which is identical to that, claimed by the subject application on page 14, lines 12 – 15. Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Regarding claim 29, Yahiaoui discloses a pulp – based nonwoven web material comprising a material selected from the listed group as set forth on page 10, lines 9 – 13 through the incorporation of Yahiaoui which discloses the pulp – based nonwoven web material comprising a material selected from the listed group as set forth in col. 6, lines 26 – 30.

With respect to claim 32, Yahiaoui discloses the a catamenial device (page 3, lines 1 – 3) comprising porous synthetic substrate including a pulp – based nonwoven web material (page 10, lines 9 – 13) treated with a density modulator consisting essentially of an alkyl glycoside (page 2, lines 34 – 36 and page 11, lines 2 – 4) wherein the at least one layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood –

Art Unit: 3761

containing body fluid as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses a porous synthetic substrate as set forth in col. 6, lines 39 – 49.

The difference between Yahiaoui and claim 32 is the provision that this particular substrate is treated with the density modulator and when treated will increase in thickness by at least about 12% when the substrate comes into contact with a blood – containing bodily fluid.

First, it would have been obvious to one of ordinary skill in the art to apply the density modulator to the substrate disclosed by Yahiaoui (US 5540979) because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9). Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

Second, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the layer of Yahiaoui that is treated with the density modulator would ultimately increase in thickness by at least about 12% when the layer

Art Unit: 3761

comes into contact with a blood – containing body fluid because Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7) which is identical to that claimed by the subject application on page 14, lines 12 – 15.

The claimed invention is directed to an absorbent article treated with a density modulator. The density modulator makes the treated material in the absorbent article more wettable, thus increasing the article's intake capacity and also lowers the density of the treated material when the material comes into contact with a blood – containing fluid. By lowering the density of the treated material, the volume of the material increases. See page 5, lines 10 – 16 of the instant specification.

Likewise, Yahiaoui discloses the use of the same density modulator (GLUCOPON 220) as used by the applicant. Therefore, it has been established that Yahiaoui provides an absorbent article treated with a density modulator, which in turn, would increase the thickness of the treated layer when that layer comes into contact with a blood – containing body fluid. In light of this, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Further, absent of a critical teaching and/or unexpected result with respect to the percentage of density modulator used, the examiner contends that the claimed invention is not patentably distinct from the prior art.

Art Unit: 3761

The difference between Yahiaoui and claim 33 is the provision that the density modulator is applied to the porous synthetic substrate in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to a substrate in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to a substrate is within the level of skill of one of ordinary art (see the rejection of claim 32), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 34 is the provision that the density modulator is applied to the porous synthetic substrate in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to a substrate in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to a substrate is within the level of skill of one of ordinary art (see the rejection of claim 32), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a

Art Unit: 3761

claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 35 is the provision that the density modulator is applied to the porous synthetic substrate in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to a substrate in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to a substrate is within the level of skill of one of ordinary art (see the rejection of claim 32), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 36 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7), which is identical to that, claimed by the subject application on page 14, lines 12 – 15. Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same

Art Unit: 3761

results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Regarding claim 38, Yahiaoui discloses a pulp – based nonwoven web material comprising a material selected from the listed group as set forth on page 10, lines 9 – 13 through the incorporation of Yahiaoui which discloses the pulp – based nonwoven web material comprising a material selected from the listed group as set forth in col. 6, lines 26 – 30.

Regarding claim 40, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use), which includes a sanitary pad.

Regarding claim 41, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use), which includes a tampon.

Allowable Subject Matter

Claims 14, 30 and 39 allowed.

Response to Arguments

Applicant's arguments with respect to claims 1 – 11, 13 , 14, 16 – 27, 29 – 30, 32 – 36, and 38 – 41 have been considered but are moot in view of the new ground(s) of rejection.

In response to the applicant's argument that Yahiaoui does not disclose a density modulator consisting essentially of alkyl glycoside, the examiner disagrees. Yahiaoui discloses a composition in which alkyl glycoside is present in amounts up to about 80% of the total composition weight (page 11, lines 2 – 7), which meets the claimed limitation that the density modulator consists essentially of alkyl glycoside.

In reply to the applicant's argument that Yahiaoui does not disclose the use of the density modulator with a pulp – based nonwoven material, the examiner disagrees. Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses the personal care article wherein at least one of the layers comprises a pulp – based nonwoven web material as set forth in col. 7, lines 17 – 22. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., alkyl glycoside as a suitable surfactant in combination with a viscosity modifier) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the applicant's argument that Yahiaoui does not disclose any treatment that expressly results in an increase in substrate thickness by at least 12% when the treated substrate is in contact with a blood – containing bodily fluid, the examiner refers to the rejection of claim

Art Unit: 3761

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7), which is identical to that, claimed by the subject application on page 14, lines 12 – 15. Therefore, while Yahiaoui does not specifically disclose an increase in substrate thickness by at least 12% when the treated substrate is in contact with a blood – containing bodily fluid, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Further, absent of a critical teaching and/or unexpected result with respect to the percentage of density modulator used, the examiner contends that the claimed invention is not patentably distinct from the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

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Michele Kidwell
May 17, 2004